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10

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 THEYA KANAGARATNAM,
14 Plaintiff,
15 v.
16 CENLAR FSB,
17 Defendants.

18 Case No.: 3:23-cv-02637-JD

19 Hon. James Donato
Courtroom 11

20 DEFENDANT, CENLAR FSB'S
NOTICE OF MOTION AND MOTION
TO DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF

21 Date: January 8, 2026
22 Time: 10:00 AM
23 Courtroom: 11

24 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

25 PLEASE TAKE NOTICE that on January 8, 2026 at 10:00 a.m., or as soon thereafter as the
26 matter may be heard, in Courtroom 11, before the Honorable James Donato, Defendant, CENLAR
27 FSB will and hereby does move the Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil
28 Procedure, for an order dismissing the First Amended Complaint filed by Plaintiff, THEYA
KANAGARATNAM.

Defendant, CENLAR FSB requests that Plaintiff, THEYA KANAGARATNAM'S First
Amended Complaint be dismissed in its entirety, with prejudice, for failure to state a claim upon

which relief can be granted.

ISSUES TO BE DECIDED

1. Whether the Complaint states any claim upon which relief may be granted, including under the Fair Debt Collection Practices Act, for Negligence, Fraud in the Concealment, Fraud in the Inducement, Slander of Title, Declaratory Relief, or Rescission.

2. Whether there is any plausible ability to further amend the First Amended Complaint to allege a cause of action.

This motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the supporting Request for Judicial Notice and the exhibits thereto, the complete files in this action, argument of counsel, and such other matters as the Court may consider.

DATED: November 21, 2025

WOLFE & WYMAN LLP

By: /s/ Cuong M. Nguen
CUONG M. NGUYEN
Attorneys for Defendant, CENLAR FSB



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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff, THEYA KANAGARATNAM (“Plaintiff”) obtained a \$100,000.00 home equity line of credit (“HELOC”) from Citibank, N.A. secured by a Deed of Trust against real property in Oakland, California in October 2006. Plaintiff defaulted on her loan obligations and nonjudicial foreclosure proceedings commenced. At the time of this filing, there has been no sale of the property. Following Notice of Removal to this Court, Plaintiff filed a First Amended Complaint (“FAC”) that suffers from the same incurable deficiencies as the original complaint and the complaints in Plaintiff’s prior actions before this.

Plaintiff’s action follows a long line of spurious debt avoidance actions that have been continually repudiated by the courts, including two prior actions filed by Plaintiff herself. The FAC fails to set forth any, let alone sufficient, facts upon which a claim for relief could be stated against Cenlar FSB, only providing inapposite legal citations and conclusory allegations cast as factual contentions. Plaintiff’s FAC is completely without merit and contrary to established California law under which the foreclosure of Plaintiff’s property may proceed to nonjudicial sale. Plaintiff cannot cure the fatal defects of her FAC. For the reasons set forth herein, Cenlar respectfully requests that the Court grant its Motion to Dismiss without leave to amend

II. FACTUAL BACKGROUND

On or about October 3, 2006, Plaintiff obtained a \$100,000.00 HELOC from Citibank, N.A. secured by a Deed of Trust against the real property located at 2316 Lakeshore Avenue, #16, Oakland, CA (the “Property”). **Request for Judicial Notice (“RJN”), Exh. A.** The Deed of Trust designates Citibank, N.A. as the beneficiary and Verdugo Trustee Service Corporation as trustee. *Id.*

A Substitution of Trustee was recorded on June 30, 2022, substituting National Default Servicing Corporation (“NDSC”) in as Trustee under the Deed of Trust. **RJN, Exh. B.**

A Notice of Default was recorded by NDSC on August 10, 2022, indicating a past due amount of \$14,082.44. **RJN, Exh. C.** It includes a declaration pursuant to Civil Code § 2923.55(c) signed by Cenlar as servicer for Citibank, N.A. *Id.* There has been no foreclosure sale as of the date of this filing.



1 **III. PRIOR LITIGATION**

2 The instant action is the fourth complaint Plaintiff has filed based on the same general
 3 allegations pertaining to the same loan against Cenlar. Plaintiff initiated the first of these lawsuits
 4 against both Cenlar and Citibank, N.A. in January 2023, which was removed to this Court by prior
 5 counsel (Case No. 3:23-cv-01110). **RJN, Exh. D.** In that complaint, Plaintiff alleged the debt owed
 6 pursuant to the valid HELOC was satisfied by fictitious instruments titled “Registered New Credit
 7 Agreement Security NOTE Draft” and “BILL of Exchange,” and therefore, the HELOC should be
 8 discharged. Citibank and Cenlar filed a motion to dismiss the complaint, but before hearing on the
 9 motion to dismiss, Plaintiff dismissed that action.

10 Then, in April 2023, Plaintiff filed a case in this Court as a “miscellaneous matter” styled as a
 11 “Petition for a Verification of Debt or Else Release from Claim” in which she makes the same general
 12 allegations in the original complaint in the present case (Case No. cv-23-80106-misc). **RJN, Exh. E.**
 13 The Court noted that the case was improperly filed as a miscellaneous matter and directed Plaintiff to
 14 refile as a civil case and pay the proper case opening fee. **RJN, Exh. F.** Instead of so doing, she
 15 appears to have proceeded by filing the current action in the Alameda County Superior Court. Cenlar
 16 then filed the Notice of Removal to bring this litigation back to the proper venue.

17 Following removal of the present case and seemingly simultaneously with Defendant’s
 18 previous Motion to Dismiss, Plaintiff filed the instant First Amended Complaint. Thus, the instant
 19 complaint actually represents Plaintiff’s fourth attempt to plead her claims.

20 **IV. PLAINTIFF’S BANKRUPTCY FILINGS**

21 On June 26, 2023, Plaintiff filed a Notice of Filing of Chapter Bankruptcy, which informed
 22 that she filed a Chapter 13 Bankruptcy Case No. 23-40702 in the United States Bankruptcy Court,
 23 Northern District of California, on June 15, 2023. On June 28, 2023, this Court entered an Order which
 24 stated:

25 Pro se plaintiff Kanagaratnam has filed a notice of bankruptcy and request to
 26 stay proceedings in this case pending the resolution of her bankruptcy proceedings. But
 27 plaintiff has not demonstrated that the automatic stay provisions of 11 U.S.C. § 362
 28 apply here. Section 362 “prohibits (1) commencing or continuing actions against the
 debtor that began or could have begun before the bankruptcy was filed, or to recover a
 pre-petition claim against the debtor; and (2) ‘any act to obtain possession of the
 property of the estate or of property from the estate or to exercise control over property

1 of the estate.’ ” Palmdale Hills Prop., LLC v. Lehman Comm. Paper, Inc. (In re
 2 Palmdale Hills Prop., LLC), 654 F.3d 868, 875 (9th Cir. 2011) (citing 11 U.S.C. §
 3 362(a)(1) & (3)). “The stay does not prevent a plaintiff/debtor from continuing to
 4 prosecute its own claims nor does it prevent a defendant from protecting its interests
 against claims brought by the debtor.” Id. “This is true, even if the defendant’s
 successful defense will result in the loss of an allegedly valuable claim asserted by the
 debtor.” Id. Consequently, the request for a stay is denied.

5 (Dkt. No. 19.)

6 On February 27, 2024, Cenlar filed a Notice of Bankruptcy Filing and Supplement to Motion
 7 to Dismiss First Amended Complaint. (Dkt. No. 47.) Cenlar’s filing informed that on February 15,
 8 2024, Plaintiff filed a Chapter 7 Bankruptcy Petition in the United States District Court, Northern
 9 District of California, as Case No. 24-40209 (the “Bankruptcy Case”). Cenlar’s position was that due
 10 to the Chapter 7 bankruptcy filing, Plaintiff no longer had standing to pursue the instant action.
 11

12 In her Bankruptcy Schedules filed with the Bankruptcy Court, Plaintiff listed only a small
 13 claims case valued at \$10,000. (**RJN, Exhibit G** at 10.) In the Statement of Financial Affairs, Plaintiff
 14 identified the instant action, but did not list it in the Schedules. (*Id.* at 36.)

15 On February 28, 2024, the Court entered its Order which stated:

16 The Court has received notice of plaintiff Kanagaratnam’s filing of Chapter 7
 17 bankruptcy. Dkt. No. 47. The case is stayed and administratively closed pending further
 18 order. The parties will file by October 4, 2024, a joint status report on the bankruptcy
 proceedings. All pending motions are terminated without prejudice.

19 (Dkt. No. 48.)

20 On October 4, 2024, a Joint Bankruptcy Status Report was filed by the parties. The parties
 21 reported, in relevant part:

22 On June 5, 2024, the United States Bankruptcy Court, Northern District of California,
 23 Case No. 24-40209 entered a Discharge Order in favor of Plaintiff THEYA
 24 KANAGARATNAM (“Plaintiff”). The automatic stay has now expired upon the entry
 25 of the Discharge Order in favor of Plaintiff pursuant to 11 U.S.C. §362(c)(2)(C).
 (Bigelow v. C.I.R. (9th Cir. 1995) 65 F.3d 127, 129.) A true and correct copy of the
 Discharge Order is attached hereto as Exhibit “1” and incorporated herein by reference.

26 (Dkt. No. 54.) Thereafter, on July 28, 2025, the Bankruptcy Court entered a Final Decree which
 27 discharged the trustee and closed the Chapter 7 bankruptcy case. **RJN, Exhibit H.**)



1 **V. PLAINTIFF'S ALLEGATIONS**

2 Plaintiff's allegations are difficult to parse and often contradictory. Plaintiff cites to a number
 3 of fictional legal theories and her allegations boil down to two primary underlying arguments. First,
 4 she alleges that Cenlar does not have the authority to foreclose upon the Deed of Trust. FAC ¶¶ 3, 1.
 5 Second, she alleges the Deed of Trust has been satisfied based upon a tender of two fictional
 6 instruments entitled "Registered New Credit Agreement Security NOTE Draft" and "BILL of
 7 Exchange." FAC ¶ 46.

8 Plaintiff seeks an order declaring the foreclosure void, quiet title, monetary damages for
 9 violation of the FDCPA, pre- and post-judgment interest, attorney's fees, and costs. FAC, Prayer at
 10 p. 22. Additionally, if Cenlar can "prove standing," she requests third-party expert evidence of defects
 11 in the "Bill of Exchange and Registered New Credit Agreement Security NOTE Draft" and, if such
 12 defects are found, time to cure said defects. *Id.*

13 **VI. LEGAL STANDARD**

14 A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the claims stated
 15 in the complaint. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 553-557 (2007). The Court must
 16 decide whether the facts alleged, if true, would entitle the Plaintiff to some form of legal remedy. *Id.*
 17 Therefore, a Rule 12(b)(6) motion is proper where there is either a lack of a cognizable legal theory
 18 or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v Pacifica Police*
 19 *Dept.*, 901 F.2d 696, 699 (9th Cir. 1990); *see also, Robertson v. Dean Witter Reynolds, Co.*, 749 F.2d
 20 530, 534 (9th Cir. 1984).

21 To survive a motion to dismiss, a complaint must allege "more than labels and conclusions ...
 22 Factual allegations must be enough to raise a right to relief above a speculative level." *Eclectic Props.*
 23 *East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995 (9th Cir. 2014) (quoting *Bell Atl. Corp. v.*
 24 *Twombly*, 550 U.S. 544, 555 (2007)). Although *well-pleaded factual allegations* must be taken as true
 25 at the motion to dismiss phase, they must plausibly suggest an entitlement for relief, "such that it is
 26 not unfair to require the opposing party to be subjected to the expense of discovery and continued
 27 litigation." *Id.* (quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)). In other words, Plaintiff
 28 "must include sufficient 'factual enhancement' to cross 'the line between possibility and plausibility.'"



1 *Id.* When Defendant's plausible alternative explanation is so convincing that Plaintiff's explanation
 2 is rendered implausible, a motion to dismiss should be granted. *Id.*

3 **VII. ARGUMENT**

4 **A. Having Filed Bankruptcy, Plaintiff Lacks Standing to Pursue this Action**

5 Upon filing Chapter 7 bankruptcy, Plaintiff no longer had standing to pursue the instant action.
 6 Federal Rules of Civil Procedure, Rule 17(a)(1) requires that every action be prosecuted in the name
 7 of the real party in interest. In a Chapter 7 bankruptcy, all of the Chapter 7 debtor's assets and liabilities
 8 (i.e., the bankruptcy estate) must be surrendered to the Chapter 7 trustee. Thus, only the Chapter 7
 9 trustee may pursue a cause of action that belongs to the bankruptcy estate, unless the claim has been
 10 abandoned by the trustee. *Bostonian v. Liberty Savings Bank* (1997) 52 Cal.App.4th 1075, 1081;
 11 *Moses v. Howard Univ. Hosp.* (DC Cir., 2010) 606 F.3d 789, 794-795; *In re Stoll* (9th Cir. BAP 2000)
 12 252 BR 492, 495. Because Plaintiff no longer had standing to pursue her claims in this action, the
 13 Court should grant Cenlar's Motion to Dismiss without leave to amend.

14 In fact, if a debtor fails to "schedule an asset, including a cause of action, that asset continues
 15 to belong to the bankruptcy estate" and does not revert to the debtor upon discharge and closing of the
 16 bankruptcy case. [Citation]."*Rhodes v. U.S. Bank Nat. Ass'n* (E.D. Cal. 2014) 2014 WL 5699543, *3.
 17 In such a situation, the complaint is appropriately dismissed without leave to amend. *Id.*; see also *Vang*
 18 *Chanthavong v. Aurora Loan Services, Inc.* (E.D. Cal. 2011) 448 B.R. 789, 800 ("Plaintiff's 'Demand

19 to Produce the Note' claim accrued prior to the close of Plaintiff's bankruptcy and should have been
 20 listed in Plaintiff's bankruptcy estate. Since this claim remains in the bankruptcy estate and Plaintiff
 21 does not have standing to pursue this claim. Therefore, Defendants' motion to dismiss this claim is
 22 granted."). Here, in her Bankruptcy Schedules, Plaintiff listed only a small claims case valued at
 23 \$10,000. (RJN, Exhibit G at 10.) In the Statement of Financial Affairs, Plaintiff identified the instant
 24 action, but did not list it in the Schedules. (*Id.* at 36.) This is fatal to Plaintiff's claims. Because Plaintiff
 25 failed to schedule the cause of action as an asset, the asset continues to belong to the bankruptcy estate,
 26 even post-discharge.

27 Having filed bankruptcy and having failed to list her claims against Cenlar in her bankruptcy
 28 schedules, Plaintiff no longer has standing to pursue her claims in this action and her claims should



1 all be dismissed without leave to amend.

2 **B. The FAC Fails to State Claim to Challenge Foreclosure Proceedings**

3 **1. California Law Does Not Require Possession of the Original Note**

4 Though difficult to decipher the exact basis, Plaintiff contends that the failure to produce the
 5 original note in some way invalidates the foreclosure and/or the entire loan. Where “plaintiff contends
 6 that foreclosure was invalid because defendants do not possess the original promissory note, the claim
 7 is not cognizable and that part of her claim is dismissed without leave to amend. California law ‘does
 8 not require possession of the note as a precondition to non-judicial foreclosure under a Deed of Trust.’
 9 ” *Green v. Alliance Title* (E.D.Cal. 2010) 2010 WL 3505072, *14 quoting *Alicea v. GE Money Bank*,
 10 2009 WL 2136969 at *2 (N.D.Cal. July 16, 2009); *see also De Valle v. Mortgage Bank of Cal.*, 2010
 11 WL 1813505, at *1–2 (E.D.Cal. May 5, 2010); *Nool v. HomeQ Servicing*, 653 F.Supp.2d 1047, 1053
 12 (E.D.Cal.2009). Indeed, the statute expressly provides a “trustee, mortgagee or beneficiary or any of
 13 their authorized agents” may conduct the foreclosure process. California *Civil Code* § 2924(a)(1).
 14 Further, California *Civil Code* § 2924(b)(4) states that a: “person authorized to record the notice of
 15 default or the notice of sale” includes “an agent for the mortgagee or beneficiary, an agent of the named
 16 trustee, any person designated in an executed substitution of trustee, or an agent of that substituted
 17 trustee.” Thus, Plaintiff’s produce-the-note theory supports no viable cause of action.

18 **2. Plaintiff Has Not Made the Requisite Tender of the Debt**

19 California law is “settled that an action to set aside a trustee’s sale for irregularities in sale
 20 notice or procedure should be accompanied by an offer to pay the full amount of the debt for which
 21 the property was security.” *Arnolds Management Corp. v. Eischen*, 158 Cal. App. 3d 575, 581 (1984);
 22 *see also Rivera v. BAC Home Loans Servicing, L.P.*, 2010 WL 4916405, at *7 (N.D. Cal. Nov. 22,
 23 2010) (“Under California law, a borrower may not assert ‘quiet title’ against a mortgagee without first
 24 paying the outstanding debt on the property.”). Here, because the FAC fails to allege that Plaintiff has
 25 tendered, or has offered to tender, the debt secured by the Property, she is unable to state a claim for
 26 quiet title or wrongful foreclosure. See *Dooms v. Federal Home Loan Mortg. Corp.*, 2011 WL
 27 1232989, at *18 (E.D. Cal. Mar.31, 2011) (“an action to set aside a foreclosure sale, unaccompanied
 28 by an offer to redeem, does not state a cause of action which a court of equity recognizes”).



1 **C. Plaintiff's Claim for Violation of the FDCPA Fails Foreclosure Activity is Not**
 2 **Debt Collection and Defendant is Not a "Debt Collector."**

3 Plaintiff alleges that Cenlar has violated the Fair Debt Collection Practices Act ("FDCPA") by
 4 mailing multiple letters to Plaintiff which asked for a lump sum of money. FAC ¶ 59. She further
 5 alleges that Cenlar failed to prove the existence of a debt or to show it was itself a bona fide holder of
 6 a debt. FAC, ¶¶ 60-63. Plaintiff also includes from the prior complaint the same allegations of non-
 7 stop calling by Cenlar, though no longer ties that conduct to a violation of the FDCPA. FAC ¶ 50.

8 This claim fails for two reasons: 1) Cenlar does not fall within the definition of a "debt
 9 collector" for purposes of the FDCPA; and 2) foreclosure activity does not constitute debt collection
 10 within the meaning of the FDCPA. To be liable for a violation of the FDCPA, the defendant must –
 11 as a threshold requirement – be a debt collector within the meaning of the Act. *Putkkuri v. Recontrust*
 12 *Company*, 2009 WL 32567, at *7 (S.D. Cal. 2009). The law is well settled that the FDCPA's definition
 13 of debt collector does not include a mortgage servicing company. *Lal v. Am. Home Servicing, Inc.*,
 14 680 F. Supp. 2d 1218, 1224 (E.D. Cal. 2010); *Caballero v. Ocwen Loan Serv.*, 2009 WL 1528128, at
 15 *1 (N.D. Cal. 2009) ("creditors, mortgage and mortgage servicing companies are not 'debt collectors'"
 16 and are except from liability under the FDCPA...Ocwen is a 'loan servicer.' Therefore, it is not a 'debt
 17 collector' and no claim can be stated against it under the FDCPA"). Plaintiff admits that Cenlar is a
 18 loan servicer. FAC. ¶ 51 and Exh. J. Accordingly, Plaintiff cannot assert a FDCPA claim against
 19 Cenlar.

20 Additionally, Plaintiff cannot state a cause of action for unfair debt collection practices under
 21 FDCPA because "'activity of foreclosing on [a] property pursuant to a deed of trust is not the collection
 22 of a debt within the meaning of the' FDCPA." *Tina v. Countrywide Home Loans, Inc.*, 2008 WL
 23 4790906, at *7 (S.D. Cal. Oct. 30, 2008) citing *Hulse v. Ocwen Fed. Bank, FSB*, 195 F.Supp. 2d 1188,
 24 1204 (D.Or. 2002). As such, Plaintiff's FDCPA claim fails as a matter of law.

25 **D. Plaintiff's Negligence Claim Fails Because She Cannot Establish the Existence of**
 26 **a Duty of Care.**

27 Plaintiff's negligence claim is difficult to decipher, but it appears to allege that Cenlar was
 28 negligent in demanding payment from Plaintiff pursuant to the HELOC. FAC, ¶ 67. This appears to

1 be premised upon the same flawed agency allegations found elsewhere in the complaint. This claim
 2 also alleges as an aside that Cenlar is liable for criminal fraud. FAC, ¶ 74. The latter allegation is not
 3 addressed herein as such a claim is improper in the subject action.

4 Under California law, the elements of a claim for negligence are that: (1) defendant had a legal
 5 duty to plaintiff, (2) defendant breached this duty, (3) defendant was the proximate and legal cause of
 6 plaintiff's injury, and (4) plaintiff suffered damage. Civ. Code § 1714; *Merrill v. Navegar, Inc.*, 26
 7 Cal.4th 465, 500 (2001).

8 As a general rule, under California law, “a financial institution owes no duty of care to a
 9 borrower when the institution's involvement in the loan transaction does not exceed the scope of its
 10 conventional role as a mere lender of money.” *Nymark v. Heart Fed. Sav. & Loan Ass'n*, 231
 11 Cal.App.3d 1089, 1095-96 (1991); *Sheen v. Wells Fargo Bank, N.A.*, 12 Cal. 5th 905, 927 (2022).
 12 “Liability to a borrower for negligence arises only when the lender actively participates in the financed
 13 enterprise beyond the domain of the usual money lender.” *Id.* at 1096; *Wagner v. Benson*, 101
 14 Cal.App.3d 27, 35 (1980). This general duty of care has been applied equally to lenders and loan
 15 servicers. *See, e.g., Osei v. Countrywide Home Loans*, 692 F. Supp. 2d 1240, 1249-50 (E.D. Cal.
 16 2010) (defendant was lender and servicer). The test for determining whether a financial institution
 17 exceeded its role as money lender and thus owes a duty of care to a borrower involves “the balancing
 18 of various factors, among which are (1) the extent to which the transaction was intended to affect the
 19 plaintiff, (2) the foreseeability of harm to him, (3) the degree of certainty that the plaintiff suffered
 20 injury, (4) the closeness of the connection between the defendant's conduct and the injury suffered, (5)
 21 the moral blame attached to the defendant's conduct, and (6) the policy of preventing future harm.”
 22 *Nymark*, 231 Cal.App.3d at 1098.

23 Here, Plaintiff bases her claim on conduct relating to the standard, and legally required, actions
 24 of a servicer in communicating with a borrower as a part of the nonjudicial foreclosure process. Such
 25 conduct is standard of a lender or servicer and does not give rise to a duty of care. Plaintiff's allegations
 26 fall short of the “active participation” that could give rise to a duty of care. *Wagner, supra* at 35; citing
 27 *Meyers v. Guarantee Sav. & Loan Assn.*, 79 Cal.App.3d 307, 312 (1978). Based on the foregoing,
 28 Plaintiff's allegations are insufficient to establish a duty of care on which Plaintiff's claim could be

1 based.

2 **E. Plaintiff's Fraud is the Concealment and Fraud in the Inducement Claims Fial**
 3 **Because She Does Not Have Standing to Challenge any Securitization and She**
 4 **Does Not Plead the Claim with Requisite Specificity.**

5 Plaintiff's fraud in the concealment and fraud in the inducement claims are based on
 6 substantially the same allegations – namely, that Cenlar is not the “holder and owner” of the Note and
 7 that the Loan was securitized. More particularly, Plaintiff alleges Cenlar is liable for fraud in the
 8 concealment because it “concealed that the Loans were securitized as well as the terms of the
 9 securitization Agreements.” FAC, ¶ 76. Plaintiff alleges Cenlar is liable for fraud in the inducement
 10 because it “misrepresented that [it is] the ‘holder and owner’ of the Note and the beneficiary of the
 11 Deed of Trust” with the purpose of “initiating the securitization process.” FAC, ¶¶ 89-92.

12 As an initial matter, Plaintiff pleads no facts showing Cenlar represented they were the holder
 13 of the Note or beneficiary of the Deed of Trust. Indeed, the exhibits attached to the FAC conclusively
 14 show that Cenlar represented it was the servicer of the HELOC. Nor does Plaintiff provide any factual
 15 allegations indicating the HELOC was indeed securitized. Notwithstanding those defects, Plaintiff's
 16 claims for fraud still fail.

17 **1. Plaintiff Has No Standing to Challenge Securitization**

18 Whether or not Plaintiff knew her loan was or was not securitized is of no relevance and
 19 Plaintiff has no standing to make such claim. *See Kalnoki v. First American Trustee Servicing*
Solutions, LLC, 8 Cal.App.5th 23, 43 (2017) (“Because any alleged irregularities in the securitization
 20 process are merely voidable at the securitized trust beneficiary’s behest, and the Kalnokis are not
 21 beneficiaries of the Bear Stearns securitized trust, they lack standing to challenge the Assignment on
 22 such grounds”); *see also Mendoza v. JPMorgan Chase Bank, N.A.*, 6 Cal.App.5th 802, 817 (2016).
 23 Loan securitization does not impact the borrower because the borrower’s obligations under the note
 24 and deed of trust remain the same. *Herrera v. Fed. Nat'l. Mortg. Assn.*, 205 Cal.App.4th 1495, 1507
 25 (2012) (disapproved on other grounds in *Yanova v. New Century Mortgage*, 62 Cal.4th 919, 943
 26 (2016)). Accordingly, Plaintiff has no standing to maintain her purported securitization claims.
 27

1 **2. Plaintiff Fails to Meet the Requirement of Pleading Specificity in Fraud**
 2 Claims.

3 To sufficiently allege a fraud cause of action, a plaintiff must specifically plead (1) a false
 4 representation or concealment of a material fact susceptible of knowledge; (2) made with knowledge
 5 of its falsity without sufficient knowledge on the subject to warrant a representation; (3) with the intent
 6 to induce the person to whom it is made to act upon it; (4) actual reliance on the misrepresentation;
 7 and (5) damages. *Wolfe v. Severns*, 109 Cal.App. 476, 485 (1930).

8 Further, “because fraud allegations involve a serious attack on the defendant, such allegations
 9 must be pled with particularity so that the court can weed out non-meritorious actions before a
 10 defendant is required to answer.” *Committee On Children’s Television, Inc. v. General Foods Corp.*,
 11 35 Cal.3d 197, 216 (1983). Every element of the cause of action must be alleged factually and
 12 specifically in full. Federal Rules of Civil Procedure, Rule 9. That is, the complaint must plead facts
 13 showing “how, when, where, to whom, and by what means the representations were tendered.”
 14 *Stansfield v. Starkey*, 220 Cal.App.3d 59, 73 (1990). Finally, a fraud cause of action against a
 15 corporation must allege the specific names of the persons who made the misrepresentations or
 16 concealed material facts, their authority to speak for the corporation, to whom they spoke, what they
 17 said or wrote, and when it was said or written. *Tarmann v. State Farm Mutual Auto. Ins. Co.*, 2
 18 Cal.App.4th 153 (1991).

19 Plaintiff satisfies none of these requirements. To begin, the fraud claims fail to allege any
 20 specific facts about purportedly false representations or the concealment of material information by
 21 Cenlar. Nowhere does the Complaint allege the “who, what, where, when, or why” of Defendant’s
 22 ostensible plan to wrongfully induce Plaintiff’s reliance on a knowing misrepresentation or
 23 concealment of material fact. Even if she were more specific about statements ostensibly made by
 24 Cenlar about the supposed securitization of her loan, Plaintiff’s allegations do not amount to fraud.
 25 As discussed in *Shapiro v. Bank of America, N.A.*, 2012 WL 670960, at *1 (E.D.Cal. Feb. 29, 2012):

26 Plaintiff’s theory is that the securitization of Plaintiff’s mortgage by the lender
 27 somehow removed the ability of the lender to record documents related to the
 28 mortgage and foreclose in the event of a default. “This theory ... has been
 soundly rejected.” [Citation.] The securitization of Plaintiff’s loan is not
 material to Plaintiff’s claims...



1 *Id.*; See also, *Stockwell v. Barnum*, 7 Cal.App. 413, 417 (1908) (it is immaterial who holds the note).
 2 As such, Plaintiff falls well short of pleading a cognizable claim for fraud.

3 **F. Plaintiff's Claim for Slander of Title Fails Because No Publications Containing**
 4 **Untrue Statement Are Alleged and Because the Foreclosure Notices Were**
 5 **Privileged.**

6 Plaintiff alleges slander of title based upon “preparing, posting, publishing, and recording of
 7 the documents previously described herein, including, but not limited to, the Notice of default, Notice
 8 of Trustee’s Sale.” FAC, ¶ 97. Plaintiff cannot maintain a cause of action for slander of title.

9 The elements of slander of title are: (1) publication; (2) falsity; (3) absence of privilege; and
 10 (4) disparagement of another’s land which is relied upon by a third party and which results in a
 11 pecuniary loss. *Appel v. Burman*, 159 Cal.App.3d 1209, 1214 (1984). Furthermore, unless a
 12 disparaging statement causes damages, the statement is not actionable. *Burkett v. Griffith*, 90 Cal.
 13 532, 537 (1891). Consequently, facts must be alleged showing that damages have been suffered.
 14 *Neville v. Higbie*, 130 Cal.App. 669, 670 (1933).

15 The FAC fails to allege any supporting facts of the publication of any untrue statements.
 16 Further, the recordation of the Notice of Default and Notice of Trustee’s Sale were privileged
 17 communications under *Civil Code* § 47, pursuant to *Civil Code* § 2924(d). The “mailing, publication,
 18 and delivery” of foreclosure notices and “performance” of foreclosure procedures. “[W]e conclude
 19 that the protection granted to nonjudicial foreclosure . . . is the qualified common interest privilege of
 20 section 47, subdivision (c)(1).” *Kachlon v. Markowitz*, 168 Cal.App.4th 316, 341 (2008); *see also*
 21 *Consumer Solutions REO, LLC v. Hillery*, 658 F. Supp. 2d 1002, 1018 (N.D. Cal 2009) (conduct is
 22 “protected by the qualified privilege of § 47(c) so long as . . . not malicious”); *see also Hagberg v.*
 23 *California Federal Bank FSB*, 32 Cal.4th 350, 361 (2004) (“As noted, the only tort claim we have
 24 identified as falling outside the privilege established by section 47(b) is malicious prosecution.”)
 25 Moreover, foreclosure notices do not slander title in that they do not disparage land. *See Ortiz v.*
 26 *Accredited Home Lenders, Inc.*, 639 F. Supp. 2d 1159, 1168 (S.D. Cal. 2009) (“The recorded
 27 foreclosure Notices do not affect Plaintiffs’ title, ownership, or possession in the Property.”)

28 The FAC lacks facts to support slander of title. The recording, mailing, and delivery of



1 foreclosure documents are privileged so as to negate a necessary element of the claim. Plaintiff can
 2 plead no facts to revive a slander of title claim and therefore renders the FAC's slander of title claim
 3 subject to dismissal with prejudice.

4 **G. Plaintiff's Declaratory Relief Claim Fails as Unnecessary and Duplicative of**
 5 **Plaintiff's Other Claims.**

6 Plaintiff's Declaratory Relief claim seeks a judicial determination of the rights and interest of
 7 the parties including whether any Defendant has authority to foreclose on the Property. FAC ¶¶ 111-
 8 112. Declaratory relief may be refused where the court's declaration or determination "is not
 9 necessary or proper at the time under all the circumstances." Code of Civ. P. § 1061.

10 **1. Plaintiff Fails to Plead Facts Showing She is Entitled to Equitable Relief.**

11 The declaration Plaintiff demands is an equitable remedy. It is a well-established maxim of the
 12 law that in order to receive equity, a plaintiff must first do equity. *Humboldt Savings Bank v.*
 13 *McCleverty*, 161 Cal. 285, 290-291 (1911). Here, Plaintiff seeks to avoid the effect of her default by
 14 effectively asking the Court to excuse her from having to repay the loans she borrowed. This is the
 15 opposite of equity. Moreover, to do equity, a defaulted borrower must tender the amount of the
 16 lender's secured indebtedness before their request for equitable relief may soundly be heard. *Abdallah*
 17 *v. United Savings Bank*, 43 Cal.App.4th 1101, 1109 (1996). Plaintiff has not met the tender
 18 requirement. The failure to adequately allege this necessary element means she cannot establish a
 19 threshold basis for pursuing declaratory relief.

20 **2. Plaintiff Alleges an Unsound Claim for Seeking Declaratory Relief**

21 "The fundamental basis of declaratory relief is the existence of an actual, present controversy
 22 over a proper subject." *City of Cotati v. Cashman*, 29 Cal.4th 69, 79 (2002). Where "[t]he issues
 23 invoked in the declaratory relief cause of action already [are] fully engaged by other causes of action,
 24 declaratory relief [is] unnecessary and superfluous." *Hood v. Superior Court*, 33 Cal.App.4th 319,
 25 324 (1995). Declaratory relief "should not be used for the purpose of anticipating and determining
 26 an issue which can be determined in the main action. The object of the statute is to afford a new form
 27 of relief where needed and not to furnish a litigant with a second cause of action for the determination
 28 of identical issues.' [Citations.]" *Id.* Additionally, declaratory relief is not available to right past

1 wrongs. *Gafcon, Inc. v. Ponsor & Associates*, 98 Cal.App.4th 1388, 1403 (2002) (“declaratory relief
 2 ‘operates prospectively, and not merely for the redress of past wrongs’ ” [citations omitted]). Indeed,
 3 “unlike coercive relief, such as damages, specific performance, or an injunction in which a party is
 4 ordered by the court to do or to refrain from doing something, a declaratory judgment merely declares
 5 the legal relationship between the parties [emphasis added].” *Mycogen Corp. v. Monsanto Co.*, 28
 6 Cal.4th 888, 898 (2002). Here, the relief Plaintiff seeks is coercive in nature. She essentially asks that
 7 the foreclosure proceedings be halted forever. This is an improper request in the context of a
 8 declaratory relief cause of action.

9 **3. The Declaratory Relief Claim Is Cumulative and Unnecessary as**
 10 **Duplicative of Plaintiff’s Other Claims.**

11 Declaratory relief is not an independent claim, but instead a form of equitable relief. *Batt v.*
 12 *City and Cnty. of San Francisco*, 155 Cal.App.4th 65, 82 (2007). Equitable remedies “are dependent
 13 upon a substantive basis for liability, [and] they have no separate viability” if all the plaintiff’s other
 14 claims fail. *Glue-Fold, Inc. v. Slatterback Corp.*, 82 Cal.App.4th 1018, 1023, n. 3 (2000); *Cal. Ins.*
 15 *Guar Ass’n v. Superior Court*, 231 Cal.App.3d 1617, 1623 (1991).

16 Plainly, the issue to which the declaratory relief is addressed is fully taken up in the other
 17 causes of action. The declaratory relief claim adds nothing to the FAC that cannot be addressed in
 18 Plaintiff’s other claims. Because it is cumulative of claims alleged elsewhere, it is superfluous and
 19 should be dismissed. *See Hood*, 33 Cal.App.4th at 324. As the declaratory relief claim is superfluous
 20 and, on its own fails to state a claim, it is properly subject to dismissal.

21 **H. Plaintiff’s Claim for Recission Fails**

22 Plaintiff alleges she is “entitled to rescind the loan and all accompanying loan documents for
 23 all of the foregoing reasons: 1) FDCPA Violations; 2) Failure to provide a Mortgage Loan Origination
 24 Agreement; 3) Fraudulent Concealment; 4) Fraudulent Inducement; 5) Making illegal or fraudulent
 25 transfers of the note and deed of trust and 6) Public Policy Grounds.” FAC ¶ 118.

26 To effect a rescission, a plaintiff must “restore to the other party everything of value which he
 27 has received under the contract or offer to restore same.” Civ. Code § 1691(b). As with
 28 declaratory relief, “in obtaining rescission or cancellation, the rule is that the complainant is

1 required to do equity, as a condition to his obtaining relief, by restoring to the defendant
 2 everything of value which the plaintiff has received in the transaction.” *Fleming v. Kagan*,
 3 189 Cal.App.2d 791, 796 (1961). As discussed at length above, Plaintiff has not tendered the
 4 indebtedness under the loan. Plaintiff cannot seek equity here because she has conclusively
 5 failed to tender. *Humboldt Savings Bank*, 161 Cal. at 290-291. Without tender, Plaintiff’s
 6 purported claim for rescission fails.

7 **1. Plaintiff’s Claim for Recission under TILA Fails**

8 Plaintiff further cites to the Truth in Lending Act (“TILA”) as extending her “right to rescind
 9 a loan to three years from the date of closing if the borrower received false or incomplete disclosures
 10 of either the loan terms or borrower’s rights to rescind.” FAC ¶ 119.

11 Even if Plaintiff had a right of rescission, her claim is time-barred. TILA allows borrowers
 12 three business days to rescind a consumer loan that uses their principal dwelling as security. *Semar v.*
 13 *Platte Valley Federal Sav. & Loan Assn.*, 791 F.2d 699, 701 (9th Cir. 1986); 15 U.S.C. § 1635(a).
 14 TILA rescission may be extended up to three years after the date of consummation of the transaction
 15 or sale of the property, whichever occurs first. 15 U.S.C. § 1635(f). Here, Plaintiff’s FAC alleges that
 16 the HELOC was consummated on October 3, 2006, and thus any possible rescission remedy expired
 17 no later than October 3, 2009, more than ten years prior to filing this action. TILA rescission is time
 18 barred.

19 Additionally, TILA contain provisions which allow the Court to condition rescission upon
 20 tender. 15 U.S.C. § 1635(b). Prior to ordering rescission based on a lender’s alleged TILA violations,
 21 a court may require borrowers to prove ability to repay the loan proceeds. *Saldate v. Wilshire Credit*
 22 *Corp.*, 268 F.R.D. 87, 97-98 (E.D. Cal. 2010), citing *Yamamoto v. Bank of New York*, 329 F.3d 1167,
 23 1172 (9th Cir. 2003) (affirming summary judgment for lender in absence of evidence that borrowers
 24 could refinance or sell property); *American Mortgage Network, Inc. v. Shelton*, 486 F.3d 815, 821 (4th
 25 Cir. 2007) (“Once the trial judge in this case determined that the [plaintiffs] were unable to tender the
 26 loan proceeds, the remedy of unconditional rescission was inappropriate”); *LaGrone v. Johnson*, 534
 27 F.2d 1360, 1362 (9th Cir. 1976). Here, the FAC does not make reference to Plaintiff’s ability to tender
 28 her indebtedness, aside from the purported tender of plainly fictional compensation, which can be



1 construed as her concession of inability to do so. Without Plaintiff's meaningful tender, rescission of
 2 the HELOC under TILA would be an empty remedy.

3 For these reasons, Defendant respectfully requests the Court sustain Plaintiff's claim for
 4 rescission without leave to amend because Plaintiff's claims fail as a matter of law.

5 **I. Plaintiff's Complaint Should be Dismissed Without Leave to Amend because**
 6 **Leave to Amend Would be Futile.**

7 Plaintiff further cites to the Truth in Lending Act ("TILA") as extending her "right to rescind
 8 a loan to three years from the date of closing if the borrower received false or incomplete disclosures
 9 of either the loan terms or borrower's rights to rescind." FAC ¶ 119.

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 25 loan proceeds, the remedy of unconditional rescission was inappropriate"); *LaGrone v. Johnson*, 534
 26 F.2d 1360, 1362 (9th Cir. 1976). Here, the FAC does not make reference to Plaintiff's ability to tender
 27 her indebtedness, aside from the purported tender of plainly fictional compensation, which can be
 28 construed as her concession of inability to do so. Without Plaintiff's meaningful tender, rescission of



1 the HELOC under TILA would be an empty remedy.

2 For these reasons, Defendant respectfully requests the Court sustain Plaintiff's claim for
3 rescission without leave to amend because Plaintiff's claims fail as a matter of law.

4 **VIII. CONCLUSION**

5 For the foregoing reasons, Defendant CENLAR FSB respectfully requests that this Court
6 dismiss the First Amended Complaint without further leave to amend.

7
8 DATED: November 21, 2025

WOLFE & WYMAN LLP

9
10 By: /s/ Cuong M. Nguyen

11 CUONG M. NGUYEN

12 Attorneys for Defendant, **CENLAR FSB**

